Water Docket
Environmental Protection Agency,
Mail Code 4101T, 1200 Pennsylvania Avenue, NW.
Washington, DC 20460

Attention: Docket ID No. OW-2003-0063.

The entomology laboratory staff of Contra Costa Mosquito & Vector Control District welcome the opportunity to submit comments regarding the "Interim Statement and Guidance on Application of Pesticides to Waters of the United States in Compliance with FIFRA" memorandum from G. Tracy Mehan, III (signed and dated, July 11, 2003) and Assistant Administrator for Water (4101) Stephen L. Johnson (signed and dated, July 11, 2003) Assistant Administrator for Prevention, Pesticides and Toxic Substances.

The Contra Costa Mosquito & Vector Control District fully supports the Interim Statement and Guidance document, and urges USEPA to issue a rule codifying its interpretation of Clean Water Act (CWA) provisions as not requiring a National Pollutant Discharge Elimination System (NPDES) permit for application of FIFRA-registered mosquito larvicides and adulticides in accordance with product labels, for the following reasons.

1. As a prerequisite for registration, larvicides and adulticides used in public health mosquito control programs undergo rigorous and comprehensive testing to determine their toxicity, impacts on non-target organisms and environmental fate. They are registered only when the EPA is convinced that usage in accordance with label stipulations does not represent undue risk to the public, non-target organisms and the environment.

2. Mosquito larvicides are specifically formulated to be applied to water in order to produce active ingredient dilutions that will affect mosquito larvae while minimizing environmental impacts and are used as part of an Integrated Pest Management (IPM) program to suppress mosquito populations below levels where disease transmission is likely. These materials have already undergone extensive testing mandated by FIFRA and monitored by EPA to ensure minimal risk prior to registration, and may only be applied by licensed applicators in accordance with strict labeling requirements.

3. Mosquito adulticides are designed to be applied at extremely low volumes (generally less than 1 ounce/acre of active ingredient) to the air column in areas where adult vector or nuisance mosquito populations exceed predetermined threshold levels. Droplet sizes are extremely small (typically less than 20 microns) to promote drift, in order to optimize contact with flying mosquitoes, reduce impact on nontarget organisms, and minimize deposition on ground and water surfaces. They are designed to be non-residual, with rapid degradation and require buffers or setbacks to further minimize the amount potentially reaching water surfaces. Existing labeling requires that these products be applied by trained and licensed applicators for public health purposes.

4. These products are applied for their intended, legal, beneficial purpose and do not constitute

"discharges of waste" as envisioned by the CWA NPDES provision. Defining them as "pollutants" subject to NPDES restrictions adds an unnecessary level of regulation to programs that are already very strictly regulated by FIFRA and additionally monitored/licensed by local regulatory agencies including state environmental protection agencies, public health departments and departments of agriculture. NPDES permit requirements may include analysis of pesticide residues from hundreds of treatments per year, for materials whose potential for environmental impact have already been evaluated and approved by EPA in accordance with FIFRA, at costs of several hundred dollars per test. These redundant and unnecessary testing requirements would have a devastating impact on budgets of mosquito control programs nationwide that are already straining to cover the increased costs of monitoring and protecting the public from West Nile virus and other vector-borne diseases, and might force some to abandon or drastically curtail their larval control efforts, which are widely regarded as the most important and effective components of mosquito IPM programs. The overall effect would be a reduction in our ability to protect the public from mosquito-borne disease, in order to comply with an additional redundant layer of regulation that provides no additional benefit to the public or the environment.

The Contra Costa Mosquito & Vector Control District also fully supports two further regulatory changes originally recommended by the American Mosquito Control Association (AMCA) that will eliminate regulatory confusion, promote consistency with the Code of Federal Regulations and obviate unnecessary future litigation. First, the definition of the term "pollutant" set forth at 40C.F.R. § 122.2 should be amended with the addition of a third subsection as follows:

(c) A pesticide product that is registered or otherwise approved under the Federal Insecticide, Fungicide and Rodenticide Act for the purpose of control of mosquito larvae or adults, other vectors (as defined by section 2(oo) of that Act), or other outdoor aquatic pests and is used for such purpose in substantial compliance with all provisions of its approved label and labeling that are relevant to protection of waters of the United States.

Second, the definition of the term "discharge of a pollutant" in 40 CFR 122.2 should be amended by adding the following sentence at the end of the definition:

"This term also does not include the application or use of a pesticide product that is registered or otherwise approved under the Federal Insecticide, Fungicide and Rodenticide Act for the purpose of control in the atmosphere of adult mosquitoes or other vectors (as defined by section 2(oo) of that Act) and is used in substantial compliance with all provisions of its approved label and labeling that are relevant to protection of waters of the United States."

Thank you for the opportunity to comment on the Interim Statement and Guidance Document. We look forward to the Agency performing a rulemaking to further clarify its position regarding this crucial public health issue.

Sincerely,

Steven Schutz, Ph.D., Scientific Programs Manager
Ann Donohue, Vector Ecologist

Contra Costa Mosquito & Vector Control District
155 Mason Circle
Concord, CA 94520

(925) 685-9301 ext. 105
sschutz@ccmvcd.net